Mr. Krishnaswamy Rao moved that the Registration Bill be referred to a Select Committee consisting of Messrs. Nagam Iyer, Rama Iyer and the mover.

Mr. Thanu Pillay seconded the motion.

Carried.

Mr. Krishnaswamy Rao applied for permission to introduce a Bill to amend the Penal Code and spoke as follows :—

"Act No. III of 1894 recently passed by the Government of India amending certain sections of the Indian Penal Code and Criminal Procedure Code, recognises certain grave offences committed in Native States, as committed within British India, in order to facilitate the arrest and conviction of fugitive offenders who take refuge in British India, after committing offences in Native States. Offenders against law and society being enemies of mankind, it behoves this Government to co-operate cordially with and reciprocate the action of the British Government in the adoption of measures for the repression of grave crimes wherever they may be committed. To do this, our criminal law needs amendment on the lines of the act above referred to.

"We have no Penal law of our own. Regulation II of 1056 introduced into Travancore *mutatis mutandis*, the Indian Penal Code and Whipping Act, as they stood in British India in July 1881. Since then, the Penal Code has been amended by the British Legislature, by half a dozen enactments viz. Acts Nos. VIII of 1882, X of 1886, I and IV of 1889, II of 1891 (the age of consent act) and III of 1894. As the amendments made by these enactments supply many defects which the working of the Indian Penal Code, as it stood before July 1881, brought to light, they have to be introduced into our law. There are many sections in the Indian Penal Code which are not quite applicable to our conditions. They require amendments with a view to adapt them to our circumstances. We have a few sections in the Code which relate wholly to offices and institutions which do not, and could never exist, in Travancore. They have to be expunged from our Code.

"The working of the laws of Travancore, has also disclosed a few defects which demand enactment of some new penal provisions, not to be found in the Indian Penal Code. To meet all these objects, I deemed it advisable to draft a Penal Code for Travancore on the basis of the Indian Penal Code and Whipping Act, as they *now* stand in British India, with the necessary amendments and additions indicated above and to lay it before the Council.

"I will next proceed to point out briefly the amendments, I have made in the Indian Penal Code and Whipping Act. The chapters and sections referred to in the following remarks are those of these two enactments.

"Sections 3, 4, 13, 14, 15, 16, 17, 18, 58, 59, 137, 139, 226 and 229, illustrations A and C under Section 19, the illustration under Section 20, and illustrations (*a*) under Section 81 (*b*) under Section 161, (*a*) under Section 174 and (*b*) under Section 177 and also the explanation I under Section 193, are omitted as they are wholly inapplicable to Travancore.

"The addition made to Section 5 simply leaves the special law of Travancore as regards sentences of death untouched.

"I have added an explanation to Section 21 so as to include certain classes of the servants of Her Majesty the Queen Empress of India, in the definition of Public Servants. In Travancore there are many servants of the British Government on duty, in connection with the Imperial Post and Telegraph offices, the subsidiary force at Quilon and the Residency. The late cashkeeper of the Residency Treasury was, at the instance of the Madras Government, tried by our Courts for Criminal breach of trust, under Section 408 of the Penal Code, on account of the doubt felt as to whether a charge under Section 409 of the Code will stand against one who was not a public servant of this State. Similar cases may arise in future. It is necessary that *when British servants are, at the instance of their Government*, brought for trial before our Courts, for offences committed in their official capacity, they should be treated

LIBRARY ARCHIVES Kerala Legislative Assembly

as "public servants" in the same way as they would be treated in British India. There are also offences which the subjects of this State may commit against British servants. I need hardly say that offences committed against public servants are graver than those of the same class committed against ordinary persons. We have also offences which could be committed only against public servants, such as bribery. A subject of this State who offers a bribe to a British officer in Travancore, would escape punishment, if such officer is not a public servant according to our law. To avoid this contingency and to meet the other objects above hinted, a new explanation is added to Section 21, to the effect that British servants *who may be handed over for trial by our courts* or *against whom* any offence may be committed *by the subjects of this State, in Travancore*, are public servants for purposes of the Code. It will be observed that this addition, in no way interferes with the existing privileges, rights and jurisdictions and that its sole object is to enable our courts to deal satisfactorily with the cases coming before them in *due* course. The other amendments in this section involve no question of principle and partake of the nature of verbal alterations made with a view to express the existing arrangements under which the servants of the Travancore Government are appointed.

"In Section 40, I have omitted paras 2 and 3, and added the words "by any special or local law" at the end of the first para. I have not been able to find out the special reasons for withholding the extended meaning assigned to the word offence" in the sections mentioned in the 2nd and 3rd paras, from the same word occurring in other sections of the Code. It seems to me that the word "offence" should have the same meaning throughout the Code. If it is thought that the provisions of any particular section of the Penal Code, should not apply to offences under any special law, the convenient course seems to me to express the same by means of an explanatory note under such section.

"I have omitted from Section 53, "transportation" and "Penal servitude" as these species of punishments could not be carried out in Travancore, and added "whipping" with a view to incorporate the provisions of the Whipping Act with the Penal Code.

"Chapters VI and VII relate to offences against the State and the army and the navy. The effect of the amendments made in them is to treat the offences committed against the British Government or their army stationed within Travancore, as offences committed against His Highness' Government and their army. In the absence of these amendments, offenders who happen to be the subjects of this State could not be punished by the Courts of Travancore for offences committed against the British Government and army. As this State has no navy and there is no British Naval Station in the vicinity of Travancore, the commission of offences by the subjects of Travancore against navy is under no circumstances possible. The offences of this class are accordingly excluded from Chapter VII. A new section taken from the Mutiny Act is added to Chapter VII making the purchase of ammunition, arms &c. from the officers of the army, penal.

"The 2nd para of Section 230 has been so amended as to bring both the Travancore and British coins under the head of "Sircar coin" which expression will take the place of "Queen's coin" wherever the same occurs. The object of this amendment is to subject those who may commit offences with reference to these two classes of coins, to a higher punishment than that awardable to those who counterfeit coins issued by Governments other than those of His Highness the Maha Rajah and of Her Majesty the Empress of India. As the law now stands in Travancore, coins of the British Empire are treated as ordinary coins. It is highly desirable that this course should be discontinued.

"Section 255 which relates to counterfeiting of stamps, is made applicable to all descriptions of British stamps in use in Travancore, such as Postage and Telegraph stamps, Postal covers, and cards. This amendment seems to be necessary to prevent the commission of offences by the subjects of Travancore, against the British stamps largely in use in this country.

"I have added two new sections to Chapter XV. A Royal Proclamation prohibits the constructions of buildings for purposes of worship, without the previous

LIBRARY ARCHIVES Kerala Legislative Assembly

sanction of His Highness' Government. But it does not prescribe the penalties for those who act contrary to its provisions. The new sections are intended to supply this defect in the existing law. As the establishment of new places of worship often leads to serious breaches of the peace, it is necessary that the Government should continue to exercise the power of interdiction for the good of all the communities. The first section makes the erection of temples even without Government sanction, an offence punishable with *simple* imprisonment for a term not exceeding one year or with fine. The second section prescribes the penalty for disobeying the order of the Government, directing the removal of any new place of worship set up without the requisite sanction, or for resisting the execution of the order of Government. Disobedience or resistance being a more serious offence than the unauthorized erection of the new place of worship which may often be the result of ignorance of the law, the punishment provided in the second section is imprisonment of either description for a term not exceeding 2 years or fine. To prevent unnecessary prosecutions for offences under these new sections and to secure to the offenders the advantage of trial by superior tribunals, I intend to introduce certain amendments in the Criminal Procedure Code, the effect of which would be that without the express sanction of Government no charge relating to these offences shall be entertained by Criminal Courts, and that no court inferior to that of a District Magistrate, shall try these offences.

"Clause 5 of Section 375 which defines the offence of rape virtually legalises *illicit* intercourse with a girl under the age of 16 years, if such intercourse takes place with her consent. This is opposed to the spirit of Sections 361 & 366, which make the seduction of a female under 16 years of age fer purposes of illicit intercourse, an offence punishable with imprisonment for a term of ten years and fine. To remove this contradiction and to make the law uniform, it is proposed to substitute "sixteen" for "ten" in the 5th clause of Section 375. A minor girl could not, except through her guardian, enter into civil contracts even as regards the most ordinary concerns of life. To empower her to give consent to her *dishonor* which will often mar all her good prospects of life, is to say the least, most inadvisable. The limit of 16 years imposed by section 361, seems to be reasonable and is adopted in the 5th clause of Section 375.

"The amendment made by the Act of 1891 known as the "age of consent Act" in the exception to Section 375, is not adopted, as the evil which gave rise to it does not exist in this country. When the husband commits rape on his wife the persons who could be expected to complain of it, are the near relations of the wife. The indissoluble character of the marriage tie, the damaging effect of the conviction on the prospects of the offender in finding any honorable employment and the lifelong animosities which the preferring of the charge would certainly create between husband and wife, would naturally induce the relatives to maintain silence and to thwart the attempts of the Police to bring the offence to light. The practical effect of the amendment of the "exception" on the lines of the "age of consent Act" would therefore be an intolerable annoyance resulting from an inquisitorial Police investigation without any commensurate advantage. These considerations have induced me to leave the exception to Section 375 as it stood before the age of consent Act. To remove the doubt that may be entertained regarding the applicability of the exception, to the followers of Marumakkathayam Law, I have added an explanation to the effect that among them the relationship of husband and wife is created by the customary presentation of cloth.

"The 24th chapter of the Bill contains the Sections of the Indian Whipping Act relating to punishments viz., 2, 3, 4 and 5 and part of section 11 which exempts females and certain classes of male offenders from whipping. The other provisions of the Act which form part of procedure have already been incorporated into the Travancore Code of Criminal Procedure (Regulation V of 1067). Section 3 requires that the offence subsequently committed should be the *same* as the previous one to warrant the whipping of the offender. The practical effect of this provision is that a thief who is subsequently convicted of the offence of theft in a building under section 380 is not liable to the punishment of whipping if his previous offence was one of

LIBRARY ARCHIVES Kerala Legislative Assembly

simple theft under section 378. But if the subsequent offence happens to be simple theft instead of theft in a building, he would be liable to the punishment prescribed in section 3. In short, the person whose subsequent offence is graver than that of the previous one, receives lighter punishment than the person whose subsequent offence is the same as the previous one. This anomaly ought to be removed. The offences mentioned in section 2, are offences against property, connected with theft in some way or other. Whipping has a greater deterrent effect upon confirmed thieves and robbers than imprisonment. To remove the anomaly above pointed out and to subject old offenders to sentences of whipping, I have in lieu of the word "same" in section 3 inserted the words "the same offence or of any other offence specified in the last preceding section."

"In other respects, the Bill closely follows the British Code as it now stands with the necessary adaptations, such as the substitution of the word or words "Imprisonment" for "Transportation," "Travancore" for "India," "Sircar coin" for "Queen's coin."

Permission having been granted, he introduced the Bill and moved that it be referred for report to a Select Committee composed of the Valia Coil Thampuran, Messrs. Watts, Thanu Pillay, Rama Iyer and the mover and that the publication of the Bill be deferred till it is reported upon by the Select Committee.

Mr. Rama Iyer seconded the motion.

Carried.

SHUNGRASOOBYER,

President.

LIBRARY ARCHIVES Kerala Legislative Assembly